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Written statement* submitted by International Service for Human Rights, a non-governmental organization in consultative status.

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 June 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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This document is submitted by the International Service for Human Rights (an NGO in special consultative status with ECOSOC) on behalf of Centro Mexicano de Derecho Ambiental (Mexico), Foundation HELP (Tanzania), ISHR, Plataforma Internacional Contra la Impunidad, Project on Organizing, Development, Education, and Research (PODER - Mexico) and Terra de Direitos (Brazil).

Human rights defenders play a critical role in making visible, preventing, mitigating and ensuring accountability and follow-up for corporate human rights abuses. Despite this, around the world, there are increasing reports of human rights defenders who advocate for corporate accountability — whether in relation to the extractive sector, labour rights, land rights, Indigenous rights or otherwise — being the subject of attacks, threats and harassment, including judicial harassment.

As a newly established process supported by many NGOs, the expectations on the IGWG by civil society and human rights defenders around the world are high. This is even more the case since it is often described as a response to business related human rights violations, and as the long-awaited avenue for putting an end to the widespread impunity for such violations.

This submission is intended to inform the IGWG in its discussion, and assist States, OHCHR and civil society to enhance the working methods over time. It makes recommendations in relation to the process before, during and after the first session of the IGWG from the perspective of human rights defenders, and sets out basic considerations as to the discussions on content and scope of a future treaty foreseen for the first session of the IGWG.

The recommendations can also be seen as indicators or benchmarks, which may serve to measure the success of the IGWG and the positions of States participating or considering to participate in its deliberations.

Process

The following considerations are critical to ensure that the IGWG meets the high expectations placed on it:

1. Adequate space, time and modalities for human rights defenders, civil society and affected communities to participate, so as to allow for their full and effective participation

The resolution establishing the IGWG recognises the important and legitimate role of civil society actors, and requests the IGWG to collect written input from relevant stakeholders. It is therefore critical that human rights defenders are transparently informed about, and effectively consulted on, the program and content of each session of the IGWG, as well as the timeline for negotiations. The experience of the Human Rights Council's institution-building process could be instructive in that regard.

Recommendations in this regard include:

To the chair of the IGWG:

- Ensure civil society input into and timely circulation of the program of work and selection of speakers and experts for each session;
- Consult with all members and observers of the Human Rights Council, without discriminating between State and NGO observers, in line with paragraph 11 of GA Resolution 60/251
- Open space for the participation of both ECOSOC and non-ECOSOC accredited organisations so as to benefit from the expertise and insight of all human rights defenders and civil society organisations wishing to participate, irrespective of their existing consultative relationships with ECOSOC/DPI.
    - Note: This has been the case with many other international standard setting processes, such as the process for drafting the Convention on the Rights of Persons with Disabilities.
    - Although this would also enable the participation of business associations, we believe that this is an effective compromise in order to allow business to transparently voice its views with regard to the IGWG process, and may contribute to levelling the playing field between corporate and NGO voices.

  - Allowing the broadest possible participation will also contribute to increasing the effectiveness and legitimacy of the process;
- Invite the participation of A-Status national human rights institutions (NHRIs) in sessions of the IGWG and informal processes related to it;
- Permit civil society to web-cast the sessions of the IGWG per the standard practice of UN treaty bodies, and explore other opportunities to use technology to enhance access to and participation in the IGWG, including through official webcasting and remote participation per the Human Rights Council's practice.

To all States:

- Hold inclusive national and/or regional level consultations in preparation of each session of the IGWG, so as to inform positions in a transparent manner;
- Actively facilitate participation of civil society, human rights defenders and victims of human rights violations in both national and international level discussion on the IGWG, as well as the sessions themselves;
- Be transparent about national-level consultations with business enterprises or associations, in the event they are conducted separately from those with defenders and affected communities;
- Support the broadest possible participation in the IGWG (see point re non-ECOSOC NGOs above).

2. Put in place specific mechanisms for the protection for human rights defenders and civil society participating in the IGWG processes

Human rights defenders working on issues of corporate accountability are frequently victims of threats, intimidation and attacks as a result of their work, from both State and non-State actors. The United Nations and member States have both a moral and legal obligation to ensure that those who contribute to the work of the IGWG can do so safely, without hindrance or fear, and without negative consequences for themselves or their organisations. This should include, but is not limited to, protection from direct threats against human rights defenders, threats against their organisations, or threats by businesses or governments to suspend other on-going cooperation or dialogues.

Recommendations in this regard include:

To the Chair of the IGWG:

- Ensure the putting in place of a process, on the part of the secretariat and with the explicit support of the Chair, to prevent acts of intimidation or reprisals against individuals participating, or seeking to participate, in IGWG processes;
- Address alleged cases of intimidation or reprisals with the concerned State or non-State actors, including business.

To all States

- Prohibit any intimidation or reprisal against a person or organisation in association with their cooperation with IGWG processes (at all levels), and ensure timely and comprehensive investigation of allegations, as well as effective remedies in that regard.

3. Ensure that the IGWG process is complementary to on-going efforts in the area of business and human rights, including the implementation of the Guiding Principles, and is conducted in a constructive and a 'non-politicised' manner

The Human Rights Council, many civil society organisation and human rights defenders have recognised the need to close regulatory gaps at national and international levels, including by embarking on the IGWG process. At the same time, there are a number of processes undertaken under the auspices of the UN and regional organisations that engage similar stakeholders, with a view to stopping human rights violations related to business operations.

In this context, we recognise that both home- and host-States of businesses have critical, if differentiated, obligations to protect and promote human rights, and protect human rights defenders. Therefore, good faith efforts are needed by all States to ensure the success of the IGWG process, and its ability to enhance protection for rights-holders around the world.

Recommendations in this regard include:

To the chair of the IGWG:

- Consider ways of building consensus on process and substance, and of bridging the political divide on this issue of common concern to all States. This could include the formation of a 'group of friends' of the IGWG;
- Find regular and public ways of ensuring that the views non-participating States are heard.

To all States:

- Participate, in a constructive and substantive manner, in the sessions of the IGWG, while continuing efforts in other forums.

Content & Scope

We recognise that the elaboration of an international instrument will be an iterative and evolving process, and that the first session if the IGWG is intended to be a forum for brainstorming "big picture" questions with regard to scope and content.

In that regard, we suggest that the recommendations guide the discussions over the first session of the IGWG, and that they be duly taken into account in the final outcome document.

Recommendations to all participants are:

1. Victims of human rights violations suffer independently of the legal form, size or country of origin of the business enterprise implicated in the violation. It is therefore imperative for the IGWG to apply the broad reading of OP1 mandating it to "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" without distinction between domestic or transnational companies;
2. All human rights are universal, indivisible, interdependent, and interrelated. The IGWG should therefore substantively consider the impact of business operations on the full range of human rights, while recognising that human rights norms and standards are not static, and may evolve over time;
3. The treaty should be structured so as to provide for and appropriate monitoring and review mechanism, building on the good practice experience of existing treaty bodies, including as regards individual complaints, while innovating with regard to corporate obligations and both State and corporate compliance;
4. Effective access to justice for victims should guide the discussion in the IGWG and the treaty, regardless of the balance struck in relation to the extraterritorial application of human rights obligations;
5. The protection of human rights defenders and the creation of an enabling environment for their work should be at the core of the discussion in the IGWG and the treaty, including by:
   - Reaffirming the State obligation to protect and support human rights defenders who work on issues of corporate accountability, including from threats by State or non-State actors, and the State obligation to create a safe and enabling environment in which human rights defenders can operate free from hindrance or fear;
   - Reaffirming the obligation of the State to investigate and ensure accountability for any threats and attacks against human rights defenders and others in connection with their work on business and human rights;
   - Reaffirming the obligation of companies to engage with human rights defenders, particularly in the conduct of human rights impact assessments and the development of risk mitigation strategies and programs;
   - Clearly setting out the obligations of business to refrain from interfering with the work of human rights defenders, as well as their responsibility to contribute to the creation of a safe and enabling environment for defenders; and

- Providing for accessible, affordable, prompt and effective judicial and non-judicial remedies for any violations, threats and attacks against human rights defenders and ensure guarantees of non-recurrence.

next Steps

The first session of the IGWG should also be used to discuss, develop, and build consensus on a refined timetable for its continued work under the current mandate, including the broad program of future sessions and inter-sessional work at international, regional and national level.

This should include the possibility of wide-ranging consultations with civil society at national and international level (see section on process, above).

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*Centro Mexicano de Derecho Ambiental, Foundation HELP, ISHR, Plataforma Internacional Contra la Impunidad, Project on Organizing, Development, Education, and Research and Terra de Direitos, NGOs without consultative status, also share the views expressed in this statement.